Logging and Management of Cultural Heritage Values Near Babine Lake North of Burns Lake, BC

Complaint Investigation 990198

January 2000

FPB/IRC/24

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103-06334/

The investigation

On June 11, 1999, the Board received a complaint from a member of a family that operates a registered trapline near Babine Lake. Babine Lake is about 60 kilometres north of Burns Lake, in the Lakes Forest District.

The complainant asserted that forest practices damaged fish habitat, culturally modified trees, trails, cultural heritage values and traplines near Babine Lake. The complainant also stated that a barge operated by Babine Forest Products (the licensee) routinely spills oil and gas into Babine Lake.

The complaint issues were very broad, so the complaint analyst met with the complainant early in the investigation to define specific issues. Consequently, the investigation considered whether the requirements of the Forest Practices Code were met, specifically:

- whether consultation with the complainant was carried out in accordance with the requirements of the Code;
- whether culturally modified trees, traditional trails and other cultural heritage values were identified and managed in accordance with Code requirements; and
- whether the barge operation complies with Code requirements.

Background

The complainant's family has trapped in the area for generations. The complainant has broad concerns about the impact of forest practices on the traditional territory of the Lake Babine Nation, including the family trapline. The analyst met with the complainant at Babine Lake on August 24, 1999.

The complainant showed the analyst two streams that flow into Babine Lake. The complainant asserted that past logging had destabilized the banks of the creeks, causing sedimentation. He also said that the streams were clogged with slash in 1998, and that he and his father had to clean them out. The complainant further stated that the wake from the licensee's barge caused a build-up of gravel at the mouths of the creeks, creating a barrier to fish passage.

The logging that the complainant referred to had taken place before 1987. The Board does not have the jurisdiction to investigate matters that took place before the Act came into force in 1995. Regardless, the analyst did not see any evidence of destabilized banks. There was no evidence of a build-up of gravel at the mouths of the creeks or logging slash in the streams. Adult salmon were in the streams, and the only obstruction of the stream was a beaver dam. The beaver dam was not blocking fish passage. Based on the lack of contrary evidence, the stream issues were not investigated further.

Investigation Findings

1. Consultation

The complainant stated that during the forest development planning process, the licensee consulted with the Lake Babine Nation instead of directly with his family.

Section 39 of the Act requires a licensee to make operational plans available for review and comment. Section 25 of the *Operational Planning Regulation* requires a licensee to advertise the opportunity to review and comment in a newspaper.

The licensee placed an advertisement in the local paper on November 27, 1998, to notify the public of the opportunity to review and comment on the forest development plan.

Finding 1:

The licensee advertised the opportunity to review and comment on their forest development plan in a newspaper. The licensee complied with section 25 of the *Operational Planning Regulation*.

Section 27 of the *Operational Planning Regulation* requires a licensee to provide an opportunity to review a forest development plan to members of the public interested in or affected by operations. The complainant and his family were clearly interested in, and potentially affected by, planned operations that were to take place in and around their trapline.

The licensee's 1998-2003 Forest Development Plan was made available for public review and comment from November 26, 1997, to February 2, 1998. On November 27, 1998, the licensee sent the complainant's father a letter indicating that the plan was available for review and comment. The complainant's father is the registered holder of the family trapline. The licensee included a map to show the location of planned activities. The complainant acknowledged that his father received the letter but he stated that his father did not fully understand what the letter was about, or how to interpret the map. The complainant was away at school at the time.

The licensee sent a similar notice that day to the forestry researcher at the Lake Babine Nation. The licensee routinely notifies the Lake Babine Nation in case there are any difficulties in communicating with band members directly. On December 2, 1998, the forestry researcher sent out his own letter to trapline holders, including the complainant's father, indicating that the forest development plan was available for review and comment.

The licensee notified the Lake Babine Nation of the opportunity to review and comment, and the same opportunity was provided directly to the complainant's father. The licensee did not consult solely through the Lake Babine Nation.

The complainant and his father did not submit any written comments on the forest development plan. However, on January 16, 1998, the licensee and the ministry made a presentation to the hereditary chiefs of the Lake Babine Nation, including band trapline holders, to explain the forest development planning process and to seek comments.

The complainant's father attended the meeting and he commented on a number of issues including use of the licensee's barge, compensation and a request to be consulted one year before cutblocks are proposed. According to the complainant, the one-year period would be adequate to allow review of proposed operations from an indigenous perspective. The licensee and the ministry documented those comments.

Even if the complainant's father did not fully understand the notice of the opportunity to review and comment on the plan, he was still provided with an adequate opportunity to comment on the plan at the meeting.

Finding 2:

The licensee provided an adequate opportunity to review the forest development plan to members of the public interested in or affected by operations including the complainant's father. The licensee complied with section 27 of the *Operational Planning Regulation.*

2. Management of Cultural Heritage Values

The complainant asserted that forest practices had destroyed culturally modified trees and other cultural heritage values. The investigation considered whether the identification and management of cultural heritage values, including culturally modified trees and traditional trails in particular, was in accordance with Code requirements.

Section 17(1)(c) of the *Forest Practices Code of British Columbia Act* requires a licensee to assess cultural heritage resources before preparing a plan for submission to the district manager. Section 37 of the *Operational Planning Regulation* requires an archaeological impact assessment (AIA) if the district manager is satisfied that an assessment is necessary. An AIA identifies potential impacts to archaeological features by proposed forestry operations. AIAs must be completed before silviculture prescriptions are approved.

The licensee's forest development plan contained an assessment of cultural heritage resources. The plan noted that aboriginal traditional use mapping was not available for the territory of the Lake Babine Nation. Instead, the licensee used "preliminary aboriginal interest" mapping to identify areas where planned development could affect aboriginal interests. The licensee then proposed management strategies to minimize impacts.

The forest development plan listed the location and status of AIAs that were underway or completed, and the management approach.

Finding 3:

The licensee's forest development plan included an assessment of cultural heritage resources. The licensee complied with section 17 of the *Forest Practices Code of British Columbia Act.*

When the licensee submitted the forest development plan for approval, the district manager had not yet determined AIA requirements for the operations proposed in the forest

development plan. In his approval letter, he told the licensee that he would identify AIA requirements by May 1998.

The district manager considers traditional use studies, if available, and an archaeological overview assessment model to determine whether AIAs are necessary. In general, the district manager requires AIAs for proposed blocks near traditional trails, streams and lakes. The district manager also considers requests for AIAs from First Nations. In this case, traditional use studies were not available, so the district manager used an archaeological overview assessment model to determine AIA requirements.

In May 1998, the district manager identified the areas where AIAs were required, and informed the licensee. An AIA was required for cutting permit 225-T2, which is within the complainant's trapping area. An archaeologist carried out an AIA for the areas identified by the district manager, including cutting permit 225-T2.

Finding 4:

FINDING 4: The licensee ensured that an archaeological impact assessment was carried out for the areas where the district manager determined that an assessment was necessary. The licensee complied with section 37 of the *Operational Planning Regulation.*

The complainant was particularly concerned that the licensee had harvested culturally modified trees (CMT). A culturally modified tree (CMT) is a tree altered by aboriginal people as part of their traditional use of the forest. In the interior of the province, aboriginal people stripped tree bark for food, medicines, cleansers and containers, among other things. The licensee has documented thousands of CMTs their operating area.

The *Heritage Conservation Act*[1] protects CMTs that were modified before 1846. Such trees cannot be disturbed unless a permit is obtained from the Ministry of Small Business, Tourism and Culture. There is no similar protection for trees modified after 1846 under the *Heritage Conservation Act*. The *Forest Practices Code of British Columbia Act* does not prohibit the harvest of CMTs, provided that they have been identified in an AIA.

Finding 5:

The *Forest Practices Code of British Columbia Act* does not prohibit the harvest of culturally modified trees provided that they have been identified in an archaeological impact assessment.

The archaeologist who conducted an AIA for cutting permit 225-T2 found 43 CMTs. The archaeologist determined that the trees were modified between 1885 and 1943. These CMTs are not protected by the *Heritage Conservation Act*.

Although the Code does not prohibit the harvest of CMTs identified in an AIA, section 41 of the Act requires the district manager to be satisfied that forest resources, including cultural heritage resources, are adequately managed and conserved before approving an operational plan. The

[1] Section 13(2)(d).

investigation considered how the district manager satisfied himself that CMTs were adequately managed and conserved in the circumstances of the complaint.

In February 1998, the district manager wrote to the licensees in the Lakes Forest District to provide them with interim direction for CMT management, until superseded by provincial policy. The district manager wrote:

> It is my opinion that the cultural needs of the aboriginal sector in terms of CMTs and the historical significance for archaeological purposes would be adequately served by identifying, recording and documenting the information about the locations of the CMTs at Lakes Forest District office. Ministry of Forests is responsible for providing the information about the CMTs to the First Nation in whose traditional territory the CMTs are located.

The district manager was only referring to CMTs not protected by the *Heritage Conservation Act*.

The archaeologist who conducted the AIA for cutblock 225-T2 identified, recorded, photographed and dated a sample of the CMTs. The AIA met the requirements of the district manager's interim direction for CMTs.

In summary, the district manager considered an archeological overview assessment model to identify the need for AIAs. The district manager required the licensee to conduct a number of AIAs, including one for a cutblock within the complainant's trapping area. The licensee ensured that the AIAs were carried out. The district manager provided interim direction for the management of CMTs to the licensee, and the AIAs were consistent with that direction.

Finding 6:

The district manager considered relevant information when he satisfied himself that cultural heritage resources, and CMTs in particular, would be adequately managed and conserved in the circumstances of this complaint.

The complainant stated that harvesting had damaged ceremonial sites and traditional trails. He did not provide any evidence of damage to ceremonial sites; therefore, investigation of that issue was not possible. However, like CMTs, a ceremonial site would be protected by the *Heritage Conservation Act*, and would likely be identified by an archaeological impact assessment. Management of cultural heritage values is also possible even after operations have begun. The *Forest Practices Code of British Columbia Act* sets out requirements for previously unidentified resource features, including cultural heritage values. Section 51(2) of the Act states that if a person carrying out a forest practice[2] finds a previously unknown resource feature such as cultural heritage feature, they must not threaten it and they must advise the district manager.

[2] For the purposes of section 51(2), 'forest practices' does not include fire control or suppression.

The complainant did show Board staff a trapping trail near Sag Lake that he claimed would be destroyed by clearcutting. The licensee was not aware of the existence of the trail until Board staff pointed it out. However, the licensee has no plans to harvest near the trail at this time.

Finding 7:

The licensee is now aware of the location of a trapping trail of concern to the complainant. There are no plans to harvest near the trail.

3. Barge Operation

Since 1981, the licensee has used a tug and barge to transport logging trucks and other equipment across Babine Lake. The barging of logging trucks across Babine Lake is a "forest practice" as defined by the Act.

The complainant asserted that the tug and barge operation resulted in spills of oil and gas into the lake. Section 45 of the Act prohibits a person from carrying out a forest practice if it results in damage to the environment. A spill of petroleum products into a lake is considered damage to the environment.

The complainant ties up his boat near the barge landing. He pointed out a black line on the hull of his boat that he claimed was evidence of fuel or oil in the water. Although the markings on the hull could very well be from fuel, the source of the fuel could not be determined.

The analyst did not see any evidence of fuel spilling from the barge during the field inspection. Furthermore, the licensee does not have any record of fuel spilling from the barge. Considering the licensees' fuel handling procedures, equipment, employee experience and training, it is very unlikely that fuel is spilled during barge operations.

Transport Canada inspects the barge operation annually. Transport Canada's manager of marine safety stated that the operation meets or exceeds all relevant regulations made under the *Canada Shipping Act*, including the *Oil Pollution Prevention Regulations*.

There is no evidence that fuel spills from the barge operation.

Finding 8:

The Board found no evidence of fuel spilling from the barge operation. There is no evidence of contravention of section 45 of the Act.

By copy of this report, the Board is informing the Ministry of Environment, Lands and Parks of the complainant's concern about the barge operation.

Conclusions

The licensee provided public notice of the opportunity to review and comment on its forest development plan. The licensee also provided an adequate opportunity to review the forest development plan to members of the public interested in, or affected by, operations, including the complainant's father. The licensee complied with sections 25 and 27 of the *Operational Planning Regulation*.

The licensee assessed cultural heritage resources in its forest development plan. The licensee also ensured that an archaeological impact assessment was carried out for the areas where the district manager determined that an assessment was necessary. The licensee complied with section 17(1)(c) of the Act, and section 37 of the *Operational Planning Regulation*.

The district manager considered relevant information when he satisfied himself that cultural heritage resources and culturally modified trees, in particular, would be adequately managed and conserved. The *Forest Practices Code of British Columbia Act* does not prohibit the harvest of culturally modified trees if they have been identified in an archaeological impact assessment.

The Board found no evidence of fuel spilling from the barge operation. There is no evidence of contravention of section 45 of the Act.

The panel of the Board that concluded this report was John Cuthbert, Fred Parker, and Mark Haddock.